

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 06-0224P
Withholding Tax
For Period Ended December 31, 2005**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration- Failure to file information return timely

Authority: IC 6-8.1-10-6

The taxpayer protests the imposition of the ten dollar (\$10.00) per return not to exceed \$25,000.00 penalty.

STATEMENT OF FACTS

The Indiana Department of Revenue "department" assessed penalty on Withholding tax returns for late filing of the WH-3 and W-2's. The taxpayer protests the imposition of the ten dollar (\$10.00) per return not to exceed \$25,000.00 penalty

I. Tax Administration- Failure to file information return timely

DISCUSSION

The taxpayer protests the imposition of the ten dollar (\$10.00) per return not to exceed \$25,000.00 penalty pursuant to IC 6-8.1-10-6:

- (a) As used in this section, "information return" means the following when a statute or rule requires the following to be filed with the department:
 - (1) Schedule K-1 of form IT-20S, IT-41, or IT-65.
 - (2) Any form, statement, or schedule required to be filed with the department with respect to an amount from which tax is required to be deducted and withheld under IC 6 or from which tax would be required to be deducted and withheld but for a exemption under IC 6.
 - (3) Any form, statement or schedule required to be filed with the Internal Revenue Service under 26 C.F.R. 301.6721-1(g)(1993)

The term does not include form IT-20FIT, IT-20S, IT-20SC, IT_41 or IT-65.

- (b) If a person fails to file an information return required by the department, a penalty of ten dollars (\$10) for each failure to file a timely return, not to exceed twenty-five thousand dollars (\$25000) in any one (1) calendar year, is imposed.
- (c) For purposes of this section the filing of a substantially blank or unsigned return does not constitute a return.

The standard for waiving the negligence penalty is given at 45 IAC 15-11-2 (c) as follows:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

The taxpayer did not provide substantial documentation to indicate that its failure to file the W-2's in a timely manner was due to reasonable cause rather than negligence.

FINDING

The taxpayer's protest is denied.